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September 17, 2020

VIA ECFHonorable Margo K. Brodie
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201Re: *Federal Defenders of New York, Inc. v. Federal Bureau of Prisons, et al.*, No. 19-cv-00660 (E.D.N.Y.)

Dear Judge Brodie:

I write to update the Court on the parties' ongoing efforts to address several of the important issues raised in this litigation through mediation.

I. Background

I have continued to receive call and videoconference log data from both parties. I continue to have active discussions with the Federal Defenders, Inc. and their

counsel and the government and representatives of the Metropolitan Detention Center (“MDC”) and Metropolitan Correctional Center (“MCC”).¹

My communications with the Federal Defenders and the government focused on the following topics:

1. The current status of in-person legal visitation at both institutions.
2. The execution of the current protocol for scheduling and placing attorney-client phone calls at the MDC and the MCC.
3. Follow-up discussions on the completed site visits at the MDC and the MCC.

II. Telephonic Contact

The parties continue to schedule and facilitate legal phone calls under the Court Protocol for Attorney Calls and Teleconference Hearings. Pursuant to the Protocol, attorney-client calls were scheduled by Federal Defenders for afternoon slots of one-half hour each from 12pm to 3pm at the MDC and 1 to 3:30 pm at the MCC. As Your Honor is aware, the parties have also made efforts to expand legal call hours beyond the times provided in the Protocol. *See* ECF Nos. 70 & 76.

A. MCC

According to the information I have from MCC, MCC scheduled 117 calls between September 10 and September 16, 2020. 108 calls were completed, six were attempted but not completed, and three were not completed for unknown reasons. We are working with the institution to obtain more information about these calls. Federal Defenders did not report that there were any calls that have been pending for longer than 48 hours.² Additionally, Federal Defenders report some technical issues this week.

B. MDC

According to the information I have from MDC, MDC scheduled 194 calls between September 10 and September 16, 2020. 172 calls were completed, 12 were attempted but not completed, three were cancelled or rescheduled, and seven were not completed for unknown reasons. We are working with the institution to obtain more information about these calls. The Federal Defenders report that 48 requests to schedule calls were pending for more than 48 hours. Additionally, Federal Defenders report some privacy and technical issues this week.

¹ I held a joint mediation call with the parties on September 17, 2020.

² Federal Defenders submitted call and VTC overflow data for the MDC for the period between September 1 and September 14, 2020. Federal Defenders did not submit any overflow data for the MCC.

The parties continue to discuss the issue of the overflow calls.

III. Videoconferencing

A. MCC

According to MCC records, there were 13 videoconferences scheduled to take place between September 10 and September 16, 2020. 11 were completed as scheduled, one was attempted but not completed, and one was rescheduled. Federal Defenders did not report that there were any VTC requests that have been pending for longer than 48 hours. Additionally, Federal Defenders report some technical issues this week.

B. MDC

According to MDC records, there were 33 videoconferences scheduled to take place between September 10 and September 16, 2020. 27 were completed as scheduled, three were cancelled or rescheduled, and three were not completed for unknown reasons. We are working with the institution to obtain more information about these VTCs. Federal Defenders report that 14 requests to schedule VTCs were pending for more than 48 hours. Federal Defenders also report some technical issues this week. We will review these reports with the parties.

The parties continue to discuss the issue of the overflow VTCs.

IV. In-Person Visitation

The MDC began in-person counsel visits last Thursday, September 10. Visits are currently scheduled via an email request placed 72 hours in advance on a first-come, first-served basis. The institution also maintains remote access via telephone and videoconference. Despite the resumption of in-person visitation a backlog of calls developed this week on two floors of the MDC. The parties are discussing this issue. The institution has also set up a system to reach out to those counsel whose requests are in backlog status to facilitate an in-person visit if desired.

I have continued to discuss with the parties logistical issues raised by the resumption of in-person visits, including but not limited to questions surrounding the HVAC system. I will continue to work with the parties to resolve these issues. I anticipate scheduling a call with the Warden next week to discuss several open issues.

The MCC is planning to resume in-person counsel visits this Monday, September 21. The institution has held “test visits” this week to prepare for the resumption of in-person visitation. Counsel are asked to schedule visits utilizing the online scheduling system. Scheduling for Monday’s visits opened today. The MCC also maintains remote access via telephone and videoconference. Similar questions about the MCC’s HVAC system have been discussed between the parties and the mediation team. I will continue to work with the parties to resolve these issues.

Respectfully,

/s/ Loretta E. Lynch
Loretta E. Lynch

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